

## REMARKS

### 1. Formal matters

#### a. Status of the Claims

Claims 1, 8, 11, 12, 14, 23, and 26 are pending in this application. Claims 11 and 14 are hereby canceled without prejudice to pursuing these claims in a continuing application. Claims 8, 12, and 23 are amended. Upon entry of these amendments, claims 1, 8, 12, 23 and 26 are pending and under active consideration. Applicant respectfully requests entry of the amendments and remarks made herein into the file history of the present application.

#### b. Amendments to the Claims

Claim 8 is amended to recite a vector comprising an HIV nucleic acid insert, support for which may be found at previous claim 8 .

Claim 12 is amended to recite a probe comprising an HIV nucleic acid insert, support for which may be found throughout the application as originally filed and at previous claim 12.

Claim 23 is amended to recite an isolated nucleic acid complement that is identical in length to the nucleic acid of claim 1 or claim 26, support for which may be found throughout the application including at previous claim 23.

### 2. Claim Objections

#### a. Claims 12 and 14

At page 2 of the Office Action, the Examiner objects to claims 12 and 14 under 37 C.F.R. § 1.75 as allegedly being a substantial duplicate of claims 1 and 26. Applicant respectfully disagrees. However, in the interest of advancing prosecution, claim 12 is amended and claim 14 is canceled without prejudice to pursuing the subject matter of claim 14 in a continuing application. Claim 12 is amended consistent with the Examiner's suggested amendments to claims 8 and 23. Applicant respectfully submits that claim 12, as amended, is substantively different from the scope of claims 1 and 26. Accordingly, Applicant respectfully requests that the objection to claim 12 be reconsidered and withdrawn.

### 3. Patentability Rejections

#### a. 35 U.S.C. § 112

##### (1) Claims 11 and 14

At page 3 of the Office Action, the Examiner rejects claims 11 and 14 under 35 U.S.C. § 112, second paragraph, as being indefinite for allegedly failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Applicant respectfully disagrees. However, in the interest of advancing prosecution, claims 11 and 14 are canceled without prejudice to pursuing the

canceled subject matter in a continuing application. Applicant respectfully requests that the rejection be reconsidered and withdrawn.

**b. 35 U.S.C. § 101**

**(1) Claims 11 and 14**

At page 4 of the Office Action, the Examiner rejects claims 11 and 14 under 35 U.S.C. § 101 alleging that the claimed invention is directed to neither a “process” nor a “machine,” but rather embraces or overlaps two different statutory classes of invention set for in 35 U.S.C. § 101. Applicant respectfully disagrees. However, in the interest of advancing prosecution, claims 11 and 14 are canceled without prejudice to pursuing the canceled subject matter in a continuing application. Applicant respectfully requests that the rejection be reconsidered and withdrawn.

**c. Obviousness-Type Double Patenting**

**(1) Claims 1, 8, 11, 12, 14, 23, and 26**

At page 5 of the Office Action, the Examiner provisionally rejects claims 1, 8, 11, 12, 14, 23, and 26 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-8, 12, and 14 of copending Application No. 10/536,560; claims 1-8, 12, and 14 of copending Application No. 10/605,838; claims 1-8, 12, and 15 of copending Application No. 605,840; claims 1-8, 12, and 14 of copending Application No. 10/707,003; claims 1, 2, and 4 of copending Application No. 10/708,952; and claims 1, 2, and 5 of copending Application No. 10/709,739.

In view of the amendments and remarks made herein, Applicant believes that the only outstanding rejection is the obviousness-type double patenting rejection, which will allow the Examiner to withdraw the provisional rejection and convert it to a double patenting rejection in the co-pending cases. In view of the instant application being filed earlier than the cited applications, Applicant respectfully requests that the obviousness-type double patenting rejection be withdrawn pursuant to MPEP 804.I.B.1.

**d. 35 U.S.C. § 102(b)**

**(1) Claims 8 and 11**

At page 6 of the Office Action, the Examiner rejects claims 8 and 11 under 35 U.S.C. § 102(b) as being anticipated by Brander et al. The Examiner alleges at page 7 of the Office Action that the disclosed vector of Brander et al comprising a HIV nucleic acid comprising a region with 100% sequence identity to that of SEQ ID NO: 14 reads on instant claims 8 and 11. Applicant respectfully disagrees. However, in the interest of advancing prosecution, claim 11 is canceled without prejudice to pursuing the canceled subject matter in a continuing application. Furthermore, claim 8 is amended using the language suggested by the Examiner. Accordingly, Applicant respectfully requests that the rejection be reconsidered and withdrawn.

**(2) Claim 23**

At page 7 of the Office Action, the Examiner rejects claim 23 under 35 U.S.C. § 102(b) as being anticipated by Brander et al. The Examiner alleges that the antisense sequence of the Gag p17 disclosed in Brander et al. reads on claim 23. Applicant respectfully disagrees. However, in the interest of advancing prosecution, claim 23 is amended using the language suggested by the Examiner. Accordingly, Applicant respectfully requests that the rejection be reconsidered and withdrawn.

**4. Conclusion**

Applicant respectfully submits that the instant application is in good and proper order for allowance and early notification to this effect is solicited. If, in the opinion of the Examiner, a telephone conference would expedite prosecution of the instant application, the Examiner is encouraged to call the undersigned at the number listed below.

Respectfully submitted,

POLSINELLI SHALTON WELTE SUELTHAUS PC

Dated: November 9, 2006

By: /Teddy C. Scott, Jr. Ph.D./  
Teddy C. Scott, Jr., Ph.D.  
Registration No.: 53,573  
Customer No.: 37808

POLSINELLI SHALTON WELTE SUELTHAUS PC  
180 N. Stetson Ave., Suite 4525  
Chicago, IL 60601  
312.819.1900 (main)  
312.873.3613 (direct)  
312.602.3955 (efax)  
tscott@pswslaw.com